

DEWEY O. SEWELL)	
Claimant)	
VS.)	
)	
INDUSTRIAL CHROME, INC.)	Docket No. 213,468
Respondent)	
AND)	
)	
HARTFORD ACCIDENT & INDEMNITY)	
Insurance Carrier)	

- (1) Whether claimant suffered personal injuries by accident arising out of and in the course of employment with the respondent on the dates alleged.
- (2) Timely notice.

Findings of Fact and Conclusions of Law

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board finds as follows:

Claimant alleges accidental injury by a series of micro-traumas through March 15, 1996. Claimant alleges injuries to his back and his hip with a specific incident occurring on March 15, 1996 when claimant arose from a five gallon bucket he was sitting on and experienced sudden pain in his hip. Claimant testified that the pain in his hip had been gradual in its onset and he had been experiencing symptoms of pain for several days due to the heavy nature of the work with respondent. On claimant's last day of work, the pain became more severe. As he rose from the bucket the pain became even more severe and the claimant had difficulty completing his work the remainder of the day. The claimant did not return to work with respondent after that work day.

Respondent alleges claimant has failed to prove that he suffered accidental injury arising out of and in the course of employment. The Appeals Board disagrees. Claimant's testimony is essentially uncontradicted regarding the slow onset of pain and the gradual increase of symptoms. The fact that the claimant suffered the pain during his lunch hour on the last day does cause some confusion but does not change the fact his symptoms gradually increased over a period of time while claimant was involved in heavy lifting. As such, the Appeals Board finds that claimant has proven by preponderance of the credible evidence that he suffered accidental injury arising out of and in the course of his employment with respondent through March 15, 1996.

Respondent next contends that claimant failed to provide timely notice of this accident. The only notice provided to respondent was claimant's comment that his hip hurt when he arose from the bucket. This comment was made to his interim supervisor. There was no indication at that time as to the cause of the hip pain. There was also no comment by claimant regarding the gradual onset of symptoms before March 15, 1996.

K.S.A. 44-520 makes it claimant's responsibility to provide notice to the respondent of an accident within ten days. The record is unclear regarding when claimant specifically told respondent that he was alleging accidental injury. The medical reports placed into evidence indicate the claimant's onset of symptoms lasted for as much as two weeks. There is no indication in the record that claimant advised his supervisor at any time during this two week period that he had suffered an accidental injury at work. The only comment was made to claimant's supervisor during the claimant's lunch hour while he was sitting on the bucket.

K.S.A. 44-501, as amended, and K.S.A. 44-508(g), as amended, make it claimant's obligation to prove his entitlement to benefits by proving the various conditions upon which his right to benefits depend. This burden of proof must be by a preponderance of the credible evidence.

The requirements of K.S.A. 44-520 are specific. Notice must be of an accident, stating the time, place and particulars thereof. There is no indication in the record that claimant gave respondent notice within ten days of an accident. With the exception of the comment regarding his hip when he got up off the bucket on his lunch hour, the testimony of the claimant is unclear as to when he did ultimately tell respondent that he was alleging a work related injury.

The Appeals Board finds therefore that the claimant has failed to prove by preponderance of the credible evidence that he provided notice in a timely fashion pursuant to K.S.A. 44-520. As such the order of Administrative Law Judge Floyd V. Palmer should be reversed on this issue.

AWARD

WHEREFORE, it is the finding, decision and order of the Appeals Board that the Order of Administrative Law Judge Floyd V. Palmer dated October 16, 1996, should be and the same is hereby reversed and claimant is denied benefits for an alleged accidental injury occurring through March 15, 1996.

IT IS SO ORDERED.

Dated this ____ day of December 1996.

BOARD MEMBER

c: Kurt A. Level, Overland Park, KS
Ronald J. Laskowski, Topeka, KS
Floyd V. Palmer, Administrative Law Judge
Philip S. Harness, Director